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AMENDED APPEAL BRIEF

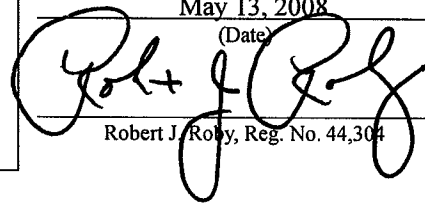
Applicant : Rummel et al.
 App. No : 10/824,766
 Filed : April 13, 2004
 For : GAS "TRUE" CONVECTION BAKE
 OVEN
 Examiner : Alfred Basichas
 Art Unit : 3749

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Robert J. Roby, Reg. No. 44,304

Mail Stop Appeal Brief-Patents

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

Sir:

In response to the Notification of Non-Compliant Appeal Brief, and in accordance with the Notice of Appeal filed February 19, 2008, Appellant submits this Amended Appeal Brief. Changes were made on pages 4 and 10. This Amended Appeal Brief which complies with 37 C.F.R. § 41.37. No fee is believed due.

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Docket No. : DYCOOK.015C1

Customer No.: 20,995

Application No. : 10/824,766

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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of the present application, Dynamic Cooking Systems, Inc. ("Assignee"), which was acquired by Fisher & Paykel Appliances Holdings Limited on October 11, 2004. Assignee is the owner of one-hundred percent interest in the present application as evidenced by an assignment recorded at Reel. No. 013640 and Frame No. 0229 by the Assignment Branch of the United States Patent and Trademark Office.

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II. RELATED APPEALS AND INTERFERENCES

Appellant, Assignee and Appellant and Assignee's legal representative are unaware of any prior or pending appeal, interference or judicial proceeding that may be related to, that may directly affect, that may be directly affected by, or that may have a bearing on the Board's decision in the present appeal. Because of this lack of knowledge, no decisions are included in the appendix labeled RELATED APPEALS AND INTERFERENCES.

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III. STATUS OF CLAIMS

Currently, the follow status exists for each of the claims: Claims 1-25 have been cancelled and Claim 26-65 stand rejected. The rejections of Claims 26-65 are being appealed.

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IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the rejection. Therefore, the claims before the Board appear as they were rejected.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary maps the independent claims to the specification by paragraph number. The following information may use representative portions of the specification and does not intend to map every location in which a description can be found. Moreover, the following information should not be interpreted to limit the claims beyond the broadest reasonable interpretation. The following quoted paragraph numbers will be with reference to the application as published.

Claim 26

Claim 26 recites:

- an oven cavity (*see Fig. 3, element 12; see also paragraph 0025: "...an oven 10 is shown comprising an oven cavity..."*);
- a fan compartment (*see Fig. 3, element 26; see also paragraph 0026: "At the rear of the oven cavity 12 and adjacent the back wall 20, is preferably a fan compartment 26..."*) adjacent a wall (*see Fig. 3, element 20; see also paragraph 0026*) of the oven cavity and housing a fan therein (*see Fig. 3, element 74; see also paragraph 0031*);
- a combustion box (*see Fig. 3, element 36; see also paragraph 0036: "A combustion box 36 is disposed below the oven bottom wall 16"*) located below the fan compartment (*see Fig. 3*) and at least a portion of a wall (*see Fig. 3, element 16 and element 62*) separating the combustion box from the oven cavity not being insulated (*see Fig. 3; see also paragraph 0027: "With reference to Fig. 3, the oven bottom wall 16 preferably includes a thin-walled raised portion 62 in fluid communication with the combustion box 36. In one embodiment, the oven bottom wall 16 includes longitudinal openings 64 extending parallel to the oven side walls 14, and in fluid communication with the combustion box 36."*);
- a tube-type gas burner (*see Fig. 2, element 38; see also paragraph 0026: "As mentioned above, and as best seen in Figs. 2 and 3, the combustion box 36*

contains a tube-type gas burner 38.") located adjacent and parallel to a front wall of the combustion box (*see paragraph 0026: "As seen best in Fig. 2, the burner 38 preferably extends substantially across the front of the combustion box 36 such that the longitudinal axis of the burner is substantially parallel to the longitudinal axis of the combustion box front wall 52."*), the front wall of the combustion box being proximate a front of the oven cavity (*see Fig. 3; see also paragraph 0026: "The box 36 is preferably sized and positioned such that the burner 38, disposed in the front of the box 36, is substantially close to the front of the oven 10..."*); and

- a flue spout (*see Fig. 1 and Fig. 3, element 40; see also paragraph [0025: "Disposed between the baffle plate 28 and the oven cavity 12 is preferably a flue spout 40."*) configured to provide fluid communication between the combustion box and an inlet portion of the fan compartment (*see Fig. 1 and Fig. 3, element 40; see also Abstract: "A flue spout is disposed between the oven cavity and the fan compartment and is adapted to join the combustion box and the over cavity in fluid communication."*; *see also paragraph 0011: "A flue spout ... preferably joins the fan compartment and the combustion box in fluid communication."*).

Claim 33

Claim 33 recites:

- A multiple mode oven (*see Figure 1, element 10; see also paragraph 0028: "A suitable burner 38 is preferably capable of being used in a typical non-convective bake mode in addition to the 'true' convection mode as discussed herein."*; *see also paragraph 0031: "Figs. 3 and 4 illustrated preferred air flow patterns during operation of the oven 10 in its gas 'true' convention mode."*; *see also paragraph 0036: "At the same time, the illustrated arrangement provides desirable heating in a fan-off baking mode."*);

- an oven cavity (*see Fig. 3, element 12; see also paragraph 0025: "...an oven 10 is shown comprising an oven cavity..."*) and a combustion box (*see Fig. 3, element 36; see also paragraph 0036: "A combustion box 36 is disposed below the oven bottom wall 16"*);
- the oven cavity comprising an oven bottom wall (*see Fig. 3, element 16; see also paragraph 0027: "With reference to Fig. 3, the oven bottom wall 16 preferably includes a thin-walled raised portion 62 in fluid communication with the combustion box 36. In one embodiment, the oven bottom wall 16 includes longitudinal openings 64 extending parallel to the oven side walls 14, and in fluid communication with the combustion box 36."*);
- the combustion box being positioned under the oven bottom wall (*see Fig. 3; see also paragraph 0036: "A combustion box 36 is disposed below the oven bottom wall 16"*);
- a gas burner disposed within the combustion box (*see Fig. 2, element 38; see also paragraph 0026: "As mentioned above, and as best seen in Figs. 2 and 3, the combustion box 36 contains a tube-type gas burner 38."*);
- the oven cavity also comprising an oven back wall (*see Fig. 3, element 20; see also paragraph 0025*);
- a fan compartment (*see Fig. 3, element 26; see also paragraph 0026: "At the rear of the oven cavity 12 and adjacent the back wall 20, is preferably a fan compartment 26..."*) being positioned substantially at a center of the back wall (*see Fig. 3, element 26; see also paragraph 0029: "...a fan compartment is preferably disposed adjacent to the back wall 20, centered relative to the side walls 14, and may be centered relative to the oven top 18 and bottom wall 16"*);
- a fan being positioned in the fan compartment (*see Fig. 3, element 74; see also paragraph 0031*);

- the fan compartment being defined in part by a baffle plate (*see Fig. 1, element 28; see also paragraph 0025: "At the rear of the oven cavity 12 and adjacent the back wall 20, is preferably a fan compartment 26 defined by a baffle plate 28, and top 30, side 32 and bottom 34 flanges."*);
- the baffle plate defining a fan inlet (*see Fig. 2, element 72; see also paragraph 0029: "As best seen in Fig. 2, the baffle plate 28 preferably comprises a plurality of openings 72 situated substantially at its center...The openings 72 at the center of the baffle plate 28 define a fan inlet 72."*);
- a flue spout positioned between the oven cavity and the fan compartment (*see Fig. 1, element 40; see also paragraph 0025: "Disposed between the baffle plate 28 and the oven cavity 12 is preferably a flue spout 40."*).
- openings being formed in the oven bottom wall such that the oven cavity and the combustion box are in direct fluid communication (*see Fig. 3; see also paragraph 0027: "In one embodiment, the oven bottom wall 16 includes longitudinal openings 64 extending parallel to the oven side walls 14, and in fluid communication with the combustion box 36."*).

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether Claims 26-65 are properly rejected under 35 U.S.C. § 102(b) as anticipated by Gilliom (U.S. Patent No. 4,108,139).
2. Whether Claims 26-65 are properly rejected under 35 U.S.C. § 103(a) as obvious over Gilliom (U.S. Patent No. 4,108,139).

VII. ARGUMENT

A. *Claims 26-65 Are Not Anticipated By Gilliom (U.S. Patent No. 4,108,139)*

Claims 26-65 have been rejected as anticipated by Gilliom. Appellant respectfully disagrees with the Examiner's characterization of Gilliam. Appellant also respectfully disagrees that the Examiner's rejection complies with the law regarding anticipation.

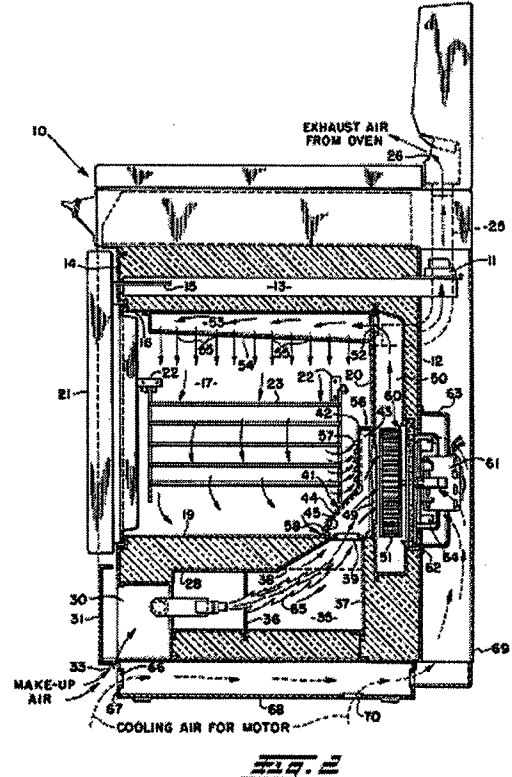
As an initial matter, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In this case, Gilliom did not disclose each and every limitation of any of the rejected claims. Thus, Gilliom did not anticipate any of Claims 26-65.

Moreover, with respect to Claims 33-65, the Examiner has not even attempted to explain the basis of the rejection. Rather, the Examiner has only explained his arguments regarding Claims 26-32.

Claim 26

Claim 26 recites, among other limitations, at least a portion of a wall separating a combustion box from an oven cavity not being insulated. The uninsulated portion of the wall is required for operating in a bake mode. In other words, heat must transfer directly from the combustion box into the oven cavity in order to work in bake mode.

To the contrary, Gilliom disclosed a convection oven that was incapable of being operated in a bake mode due to insulation that is positioned between the combustion box and the oven cavity. Moreover, Gilliom specifically stated that his invention relates to



“convection ovens.” Nowhere did Gilliom mention a “bake mode.”

The combustion box 28 of Gilliom clearly was insulated from the oven cavity. Col. 3, lines 57-60 stated “the heat source is a gas burner 27 contained within a burner box 28 that is located beneath the oven cavity at one side of the same, the left as viewed from the front, with some of the thermal insulation between the two.” Thus, there was a complete inability to operate in a “bake mode,” which would only result from the passage of heat between the combustion box to the oven cavity. Moreover, the off-center location of the heat source also would impair the ability of the disclosed oven to be operated in “bake mode” because the off-center location would cause nonuniform cooking results even if the heat were able to be transferred into the oven cavity from that location. Thus, the combustion box of Gilliom was insulated and isolated from the oven cavity of Gilliom. The wall between the combustion box and the oven cavity did not have a portion that was uninsulated.

For at least this reason, Claim 26 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 28

In addition to reciting the limitations of Claim 26, Claim 28 recites, among other limitations, openings formed in a bottom wall of the oven separating the oven cavity from the combustion box.

As explained above, Gilliom isolated the combustion box from the oven cavity. The wall between the two was insulated and there were no openings formed in the bottom wall of the oven that separated the oven cavity from the combustion box.

The Examiner has cited to element 58 as being openings formed in a bottom wall of the oven separating the oven cavity from the combustion box and the Examiner has cited to Fig. 2. Appellant submits that element 58 indicates louvered slots that are formed in a lower wall section of a recirculation collector for the oven. See Col. 5, lines 4-6 and 6-10. These openings 58 extend through a wall that separates the oven cavity from the recirculation collector, which is

connected to the combustion box through a completely separate opening 39. These openings 58 do not extend through a wall that separates the oven cavity from the combustion box.

For at least these reasons, Claim 28 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 29

In addition to reciting the limitations of Claim 26, Claim 29 recites, among other limitations, a bottom wall of the combustion box comprising a rearward upward slope.

The Examiner has argued that a bottom wall of Gilliom's combustion box comprised a rearward upward slope and cited to Fig. 2. While Gilliom may have had a top wall 38 that sloped rearward upward, Gilliom's bottom wall was flat. The bottom wall did not slope rearward upward. Thus, Gilliom did not disclose a bottom wall of the combustion box comprising a rearward upward slope.

For at least these reasons, Claim 29 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claims 27 and 30-32

Claims 27 and 30-32 depend from Claim 26. Thus, Claims 27 and 30-32 are not anticipated by Gilliom for at least the same reasons that Claim 26 is not anticipated by Gilliom. Reversal of the rejections of these claims is respectfully requested.

Claim 33

Claim 33 is directed to a multiple mode oven. As discussed above, Gilliom is strictly a convection oven. Thus, Gilliom is not a multiple mode oven. While the Examiner did not give any patentable weight to the recitation of the words "multiple mode," Appellant submits that at least Claim 52 recites "multiple mode oven" in the body of the claim. For this reason, as well as the reason that the Appellant has relied upon the recitation in the preamble, Appellant submits that the recitation of "multiple mode" should be limiting upon Claims 33-65.

Regardless of whether or not the preamble limitation of “multiple mode” is limiting, Claim 33 also recites, among other limitations, openings being formed in the oven bottom wall such that the oven cavity and the combustion box are in direct fluid communication.

As discussed above, Gilliom isolated the combustion box from the oven cavity. In fact, the entire wall was insulated. In Gilliom, there were no openings through any bottom wall such that the oven cavity and the combustion box were in direct fluid communication.

Thus, for at least these reasons, Claim 33 is not anticipated. Reversal of the rejection of this claim is respectfully requested.

Claim 34

In addition to reciting the limitations of Claim 33, Claim 34 recites, among other limitations, that the fan inlet is positioned centrally in the baffle plate, which baffle plate, according to Claim 33, at least partially defines a fan compartment and a fan inlet.

As shown in Figure 1 of Gilliom, the fan 51, which was a centrifugal blower, and the circular opening 49 were offset to the right while the openings 56 that defined the baffle plate were offset to the left such that the fan inlet was not positioned centrally in the baffle plate. Moreover, while the fan inlet may have been positioned in the housing 41, which housing extended the full width of the oven (see Col. 4, lines 34-46), this housing 41 formed a front wall of a chamber and this housing did not define the fan compartment.

Thus, Gilliom did not disclose a baffle plate that at least partially defined a fan compartment and a fan inlet. Moreover, Gilliom did not disclose that the fan inlet was positioned centrally in the baffle plate.

For at least these reasons, Claim 34 is not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 40

In addition to reciting the limitations of Claim 33, Claim 40 recites, among other limitations, a bottom wall of the combustion box having a portion that slopes upward in a rearward direction.

The Examiner has argued that a bottom wall of Gilliom's combustion box comprised a rearward upward slope and cited to Fig. 2. While Gilliom may have had a top wall 38 that sloped rearward upward, Gilliom's bottom wall was flat. The bottom wall did not slope upward in a rearward direction. Thus, Gilliom did not disclose a bottom wall of the combustion box having a portion that slopes upward in a rearward direction.

For at least these reasons, Claim 40 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 47

In addition to reciting the limitations of Claim 33, Claim 47 recites, among other limitations, the combustion box being positioned centrally under the oven bottom wall. Because the claimed oven can be operated in at least a bake mode in addition to a convection mode, having the combustion box positioned centrally under the oven bottom wall is important to uniform cooking.

Gilliom's combustion box 28 clearly was offset to the left (see Fig. 3). Thus, Gilliom's combustion box 28 was not positioned centrally under the oven bottom wall. While the Examiner has directed Appellants attention to Fig. 1, Fig. 2 and Fig. 3, Appellant respectfully submits that only Fig. 3 showed the location of the combustion box 28 relative to the oven bottom wall and that this figure clearly showed that the combustion box was NOT centrally positioned relative to the oven bottom wall.

For at least these reasons, Claim 47 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 53

In addition to reciting the limitations of Claim 33, Claim 53 recites, among other limitations, that the openings in the oven bottom wall are generally covered by manifolds.

The Examiner has not addressed this limitation at all. As explained above, Gilliom did not have any of the openings recited in Claim 33. For this reason, Gilliom also did not have any manifolds that generally cover the openings in the bottom wall.

For at least these reasons, Claim 53 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 54

In addition to reciting the limitations of Claim 53, Claim 54 recites, among other limitations, that the manifolds comprise a top and a back.

The Examiner has not addressed this limitation at all. As explained above, Gilliom did not have any of the openings recited in Claim 33 and did not have the manifolds recited in Claim 53, therefore Gilliom also did not disclose that the manifolds had a top and a back.

For at least these reasons, Claim 54 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 55

In addition to reciting the limitations of Claim 53, Claim 55 recites, among other limitations, that the manifolds are open toward side walls of the oven cavity.

The Examiner has not addressed this limitation at all. As explained above, Gilliom did not have any of the openings recited in Claim 33 and did not have the manifolds recited in Claim 53, therefore Gilliom also did not disclose that the manifolds open toward side walls of the oven cavity.

For at least these reasons, Claim 55 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 58

In addition to reciting the limitations of Claim 33, Claim 56 recites, among other limitations, that the fan compartment is generally horizontally centered on the oven back wall.

The Examiner has not addressed this limitation at all. As explained above, the fan compartment in Gilliom was offset to one side (see Fig. 1).

For at least these reasons, Claim 58 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 59

In addition to reciting the limitations of Claim 33, Claim 59 recites, among other limitations, that the baffle plate comprises a plurality of openings positioned to generally correspond to a center of the fan positioned in the fan compartment.

The Examiner has not addressed this limitation at all. Any openings in the rear of Gilliom's oven cavity were offset to one side (see Fig. 1). These openings, however, were offset to the opposite side relative to the fan. Thus, Gilliom did not disclose a baffle plate with openings that comprised a plurality of openings positioned to generally correspond to a center of the fan positioned in the fan compartment.

For at least these reasons, Claim 59 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 61

In addition to reciting the limitations of Claim 33 and Claim 60, Claim 61 recites, among other limitations, that the openings in the central portion of the baffle plate correspond to the fan positioned in the fan compartment.

The Examiner has not addressed this limitation at all. As explained above, the fan compartment in Gilliom was offset to one side (see Fig. 1) and any holes in the back of the oven cavity were offset to the other side. Thus, Gilliom did not disclose a construction in which the

openings in the central portion of the baffle plate corresponded to the fan positioned in the fan compartment.

For at least these reasons, Claim 61 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 62

In addition to reciting the limitations of Claim 33, Claim 62 recites, among other limitations, that the combustion box comprises at least one secondary air inlet hole positioned between the gas burner and the flue spout.

The Examiner has not addressed this limitation at all. Gilliom did not disclose any secondary air inlet hole positioned between the gas burner and the flue spout. Moreover, Gilliom did not disclose any second air inlet holes at all.

For at least these reasons, Claim 59 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claims 35-39, 41-46, 48-52, 57, 60 and 63-65

Claims 35-39, 41-46, 48-52, 57, 60 and 63-65 depend from Claim 33. Thus, these claims are not anticipated by Gilliom for at least the same reasons that Claim 33 is not anticipated by Gilliom. Reversal of the rejections of these claims is respectfully requested.

B. *Claims 26-65 Are Patentable Over Gilliom (U.S. Patent No. 4,108,139)*

To establish a prima facie case of obviousness, three basic criteria must be met: first, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. §2143. In addition, the obviousness of the recited constructions must be evaluated in terms of the whole invention and must be determined on the totality of the record,

by a preponderance of evidence with due consideration to the persuasiveness of all arguments. See *In re Chu*, 36 USPQ.2d 1089 (Fed. Cir. 1995).

The Examiner, in rejecting the claims, stated that “[w]here differences occur between the newly claimed invention and the invention disclosed by Gilliom, such differences appear to be a matter of design choice based upon spatial considerations. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by Gilliom, so as to provide for spatial considerations.”

The only discussion in the M.P.E.P. of which Appellant is aware regarding “design choice” involves the rearrangement of parts (*see M.P.E.P. § 2144(VI) (C)*). Even in the confines of rearrangement of parts, this section specifically states that the mere fact that a worker in the art could rearrange the parts of the reference to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant’s specification, to make the necessary changes in the reference device. *Citing Ex Parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

In the present application, the components have not simply been rearranged; Gilliom simply failed to disclose, teach or suggest a litany of limitations recited by the rejected claims and some of those limitations will be discussed below. Gilliom disclosed a convention oven that was incapable of being operated in a bake mode due to the insulation present between the heat source and the oven cavity. As explained previously, Gilliom specifically stated that the invention related to “convention ovens.” Nowhere did Gilliom mention a “bake mode.” The burner box of Gilliom clearly was insulated from the oven cavity. Col. 3, lines 57-60 state “the heat source is a gas burner 27 contained within a burner box 28 that is located beneath the oven cavity at one side of the same, the left as viewed from the front, with some of the thermal insulation between the two.” Thus, there was a complete inability to operate in a “bake mode.” Moreover, the off-center location of the heat source also impaired the ability of the disclosed

oven to be operated in “bake mode” because the off-center location would cause nonuniform cooking results even if the heat were able to be transferred into the oven cavity from that location. Thus, the combustion box of Gilliom was insulated and isolated from the oven cavity of Gilliom and the oven of Gilliom was not able to be operated in a bake mode as well as a convention mode.

Claim 26

Claim 26 recites, among other limitations, at least a portion of a wall separating a combustion box from an oven cavity not being insulated. As discussed above, given the construction of Gilliom, at least this limitation was not disclosed or suggested by Gilliom. There was no teaching or suggestion to modify Gilliom. Moreover, not insulating at least a portion of a wall separating a combustion box from an over cavity is not “a matter of design choice,” it was a fundamental requirement for an oven that could operate in a bake mode.

Thus, for at least these reasons, Claim 26 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 28

As discussed above, Claim 28 recites, among other limitations, openings formed in a bottom wall of the oven separating the oven cavity from the combustion box. The Examiner failed to provide any rational for the inclusion of openings that provide a passage between the oven cavity and the combustion box. Given Gilliom’s requirement for insulation between the oven cavity and the combustion box, Gilliom could not have functioned as intended if such openings were provided. Because Gilliom would no longer function for its intended purpose, such a change to Gilliom would not have been obvious.

For at least these reasons, Claim 28 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 29

Claim 29 recites, among other limitations, a bottom wall of the combustion box the comprised a rearward upward slope. Gilliom featured a flat surface in this region. There was no reason, rational, suggestion or motivation to modify Gilliom to provide a sloping bottom wall.

Thus, a prima facie case of obviousness has not been established with respect to Claim 29. Reversal of the rejection of this claim is respectfully requested.

Claims 27 and 30-32

Claims 27 and 30-32 depend from Claim 26 and are not rendered unpatentable by Gilliom for at least the same reasons that Claim 26 is not rendered unpatentable by Gilliom. Moreover, at least some of these claims recite further patentable distinctions. For at least these reasons, Claims 27 and 30-32 are patentable over Gilliom. Reversal of the rejections of these claims is respectfully requested.

Claim 33

As an initial matter, Claim 33 recites a multiple mode oven. Gilliom did not operate in any other mode than convection, as discussed above. Moreover, there was no teaching or suggestion of modifying Gilliom to form a multiple mode oven and any such modifications would result in removing insulation that was disclosed to have a specific purpose in the operation of the oven of Gilliom. In addition, Claim 33 recites, among other limitations, openings formed in the oven bottom wall such that the oven cavity and the combustion box are in direct fluid communication. As discussed above, Gilliom did not teach such a direct fluid communication through openings formed in the oven bottom wall. Moreover, there was no teaching or suggestion in the prior art that would lead one to modify Gilliom in such a manner given Gilliom's explicit teachings regarding the insulated nature of the combustion box.

For at least these reasons, Claim 33 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 34

Claim 34 recites, among other limitations, that the fan inlet is positioned centrally in the baffle plate that defines the fan inlet, which results in more uniform distribution of the heated air in the oven. To the contrary, Gilliom taught, a Col. 4, lines 34-57, that its fan, and therefore its inlet, was offset to one side within the “specially formed housing” taught by Gilliom. There is no teaching or suggestion in Gilliom for the centered construction recited by Claim 34.

For at least these reasons, Claim 34 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 40

Claim 40 recites that the combustion box comprises a bottom wall that has a portion that slopes upward in a rearward direction. Such a construction also was not taught or suggestion by Gilliom, which taught a square corner, as shown in Figure 2.

For at least these reasons, Claim 40 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 47

Claim 47 recites that the combustion box is positioned substantially centrally under the oven bottom wall. Such a placement provides uniform heating when the oven is operated in bake mode. Gilliom was only operated in a convection mode. Therefore, uniform cooking was not influenced by placement of the combustion box. As such, there is no motivation or suggestion to position the combustion box substantially centrally under the oven bottom wall.

For at least these reasons, Claim 47 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 53

Claim 53 recites that the openings in the oven bottom wall are generally covered by manifolds. First, because Gilliom required the insulation between the combustion box and the

oven cavity, no openings were present and, because no openings were present, manifolds were not suggested to generally cover the openings. The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 53 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 54

In addition to reciting the limitations of Claim 53, Claim 54 recites, among other limitations, that the manifolds comprise a top and a back.

The Examiner has not addressed this limitation at all. As explained above, Gilliom did not have any of the openings recited in Claim 33 and did not have the manifolds recited in Claim 53, therefore Gilliom also did not teach or suggest that the manifolds had a top and a back. The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 54 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 55

In addition to reciting the limitations of Claim 53, Claim 55 recites, among other limitations, that the manifolds are open toward side walls of the oven cavity.

The Examiner has not addressed this limitation at all. As explained above, Gilliom did not have any of the openings recited in Claim 33 and did not have the manifolds recited in Claim 53, therefore Gilliom also did not teach or suggest that the manifolds open toward side walls of the oven cavity. The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 55 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 58

In addition to reciting the limitations of Claim 33, Claim 58 recites, among other limitations, that the fan compartment is generally horizontally centered on the oven back wall.

The Examiner has not addressed this limitation at all. As explained above, the fan compartment in Gilliom was offset to one side (see Fig. 1). The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 58 was not anticipated by Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 59

In addition to reciting the limitations of Claim 33, Claim 59 recites, among other limitations, that the baffle plate comprises a plurality of openings positioned to generally correspond to a center of the fan positioned in the fan compartment.

The Examiner has not addressed this limitation at all. Any openings in the rear of Gilliom's oven cavity were offset to one side (see Fig. 1). These openings, however, were offset to the opposite side relative to the fan. Thus, Gilliom did not disclose a baffle plate with openings that comprises a plurality of openings positioned to generally correspond to a center of the fan positioned in the fan compartment. The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 59 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 61

In addition to reciting the limitations of Claim 33 and Claim 60, Claim 61 recites, among other limitations, that the openings in the central portion of the baffle plate correspond to the fan positioned in the fan compartment.

The Examiner has not addressed this limitation at all. As explained above, the fan compartment in Gilliom was offset to one side (see Fig. 1) and any holes in the back of the oven cavity were offset to the other side. Thus, Gilliom did not teach or suggest a construction in which the openings in the central portion of the baffle plate correspond to the fan positioned in the fan compartment. The Examiner has identified no reason, rational, suggestion or motivation to would lead one to modify Gilliom in a manner that would result in the claimed invention.

For at least these reasons, Claim 61 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claim 62

In addition to reciting the limitations of Claim 33, Claim 62 recites, among other limitations, that the combustion box comprises at least one secondary air inlet hole positioned between the gas burner and the flue spout.

The Examiner has not addressed this limitation at all. Gilliom did not teach or suggest any secondary air inlet hole positioned between the gas burner and the flue spout. Moreover, Gilliom did not disclose any second air inlet holes at all.

For at least these reasons, Claim 62 is patentable over Gilliom. Reversal of the rejection of this claim is respectfully requested.

Claims 35-39, 41-46, 48-52, 57, 60 and 63-65

Claims 35-39, 41-46, 48-52, 57, 60 and 63-65 depend from Claim 33. Thus, these claims are patentable over Gilliom for at least the same reasons that Claim 33 is not anticipated by Gilliom. Reversal of the rejections of these claims is respectfully requested.

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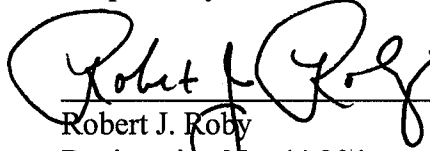
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VIII. CONCLUSION

For at least the reasons set forth above, Appellants respectfully submit that the rejections of Claims 26-65 are improper and request that these rejections be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert J. Roby", is written over a horizontal line.

Robert J. Roby

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IX. CLAIMS APPENDIX

Claims 1-25 (Cancelled)

26. (Previously presented) An oven comprising:

an oven cavity;

a fan compartment adjacent a wall of the oven cavity and housing a fan therein;

a combustion box located below the fan compartment and at least a portion of a wall separating the combustion box from the oven cavity not being insulated;

a tube-type gas burner located adjacent and parallel to a front wall of the combustion box, the front wall of the combustion box being proximate a front of the oven cavity;

a flue spout configured to provide fluid communication between the combustion box and an inlet portion of the fan compartment.

27. (Previously Presented) The oven of Claim 26, wherein a portion of the inlet portion is open to the oven cavity.

28. (Previously Presented) The oven of Claim 26, further comprising openings formed in a bottom wall of the oven separating the oven cavity from the combustion box.

29. (Previously Presented) The oven of Claim 26, wherein a bottom wall of the combustion box comprises a rearward upward slope.

30. (Previously Presented) The oven of Claim 26, wherein the combustion box comprises a plurality of air inlet holes.

31. (Previously Presented) The oven of Claim 26, wherein the flue spout covers substantially the entire inlet portion of the fan compartment.

32. (Previously Presented) The oven of Claim 26, wherein the flue spout covers at least half of the inlet portion of the fan compartment.

33. (Previously Presented) A multiple mode oven comprising an oven cavity and a combustion box, the oven cavity comprising an oven bottom wall, the combustion box being positioned under the oven bottom wall, a gas burner disposed within the combustion box, the oven cavity also comprising an oven back wall, a fan compartment being positioned substantially at a center of the back wall, a fan being positioned in the fan compartment, the fan compartment

being defined in part by a baffle plate, the baffle plate defining a fan inlet, a flue spout positioned between the oven cavity and the fan compartment, and openings being formed in the oven bottom wall such that the oven cavity and the combustion box are in direct fluid communication.

34. (Previously Presented) The multiple mode oven of Claim 33, wherein the fan inlet is positioned centrally in the baffle plate.

35. (Previously Presented) The multiple mode oven of Claim 33, wherein a portion of the oven back wall forms a portion of the fan compartment.

36. (Previously Presented) The multiple mode oven of Claim 33, wherein the fan compartment comprises multiple peripheral fan outlets.

37. (Previously Presented) The multiple mode oven of Claim 33, wherein the fan comprises a centrifugal fan.

38. (Previously Presented) The multiple mode oven of Claim 33, wherein the gas burner comprises a tube-type gas burner.

39. (Previously Presented) The multiple mode oven of Claim 38, wherein the tube-type gas burner comprises a longitudinal axis and the longitudinal axis extends generally parallel to the oven back wall.

40. (Previously Presented) The multiple mode oven of Claim 33, wherein the combustion box comprises a bottom wall having a portion that slopes upward in a rearward direction.

41. (Previously Presented) The multiple mode oven of Claim 33, wherein the combustion box comprises a plurality of primary combustion holes.

42. (Previously Presented) The multiple mode oven of Claim 41, wherein the primary combustion holes are positioned in a front side of the combustion box.

43. (Previously Presented) The multiple mode oven of Claim 41, wherein the combustion box further comprises a plurality of secondary combustion holes.

44. (Previously Presented) The multiple mode oven of Claim 43, wherein the secondary combustion holes are located in a bottom of the combustion box.

45. (Previously Presented) The multiple mode oven of Claim 33, wherein the flue spout comprises an upper portion that covers substantially the entire fan inlet.

46. (Previously Presented) The multiple mode oven of Claim 33, wherein the flue spout comprises an upper portion that covers substantially half of the fan inlet.

47. (Previously Presented) The multiple mode oven of Claim 33, wherein the combustion box is positioned substantially centrally under the oven bottom wall.

48. (Previously Presented) The multiple mode oven of Claim 33, wherein the flue spout comprises a solid front wall.

49. (Previously Presented) The multiple mode oven of Claim 33, wherein the oven cavity comprises at least one exhaust vent located near a bottom of the oven back wall.

50. (Previously Presented) The multiple mode oven of Claim 33, wherein the oven cavity does not comprise a fan compartment attached to a top wall.

51. (Previously Presented) The multiple mode oven of Claim 33, wherein the combustion box comprises primary air intake holes positioned below the gas burner.

52. (Previously Presented) The multiple mode oven of Claim 33, wherein the gas burner is positioned proximate a front of the multiple mode oven.

53. (Previously Presented) The multiple mode oven of Claim 33, wherein the openings in the oven bottom wall are generally covered by manifolds.

54. (Previously Presented) The multiple mode oven of Claim 53, wherein the manifolds comprise a top and a back.

55. (Previously Presented) The multiple mode oven of Claim 53, wherein the manifolds are open toward side walls of the oven cavity.

56. (Previously Presented) The multiple mode oven of Claim 33, wherein the openings in the oven bottom wall comprises a plurality of holes having shapes selected from the group consisting of circles, ellipses and rectangles.

57. (Previously Presented) The multiple mode oven of Claim 33 wherein the fan compartment is generally vertically centered on the oven back wall.

58. (Previously Presented) The multiple mode oven of Claim 33, wherein the fan compartment is generally horizontally centered on the oven back wall.

59. (Previously Presented) The multiple mode oven of Claim 33, wherein the baffle plate comprises a plurality of openings positioned to generally correspond to a center of the fan positioned in the fan compartment.

60. (Previously Presented) The multiple mode oven of Claim 33, wherein the baffle plate comprises a plurality of openings positioned in a central portion of the baffle plate.

61. (Previously Presented) The multiple mode oven of Claim 60, wherein the openings generally correspond to the fan positioned in the fan compartment.

62. (Previously Presented) The multiple mode oven of Claim 33, wherein the combustion box comprises at least one secondary air inlet hole positioned between the gas burner and the flue spout.

63. (Previously Presented) The multiple mode oven of Claim 33, wherein the oven cavity comprises at least one oven vent opening.

64. (Previously Presented) The multiple mode oven of Claim 63, wherein the oven vent opening extends through the back wall.

65. (Previously Presented) The multiple mode oven of Claim 63, wherein the oven vent opening extends through an upper portion of the back wall.

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X. EVIDENCE APPENDIX

None

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XI. RELATED PROCEEDINGS APPENDIX

None

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